

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  NOW COMMUNICATIONS, INC.	DOCKET NOS. TCU-02-5 WRU-02-14-3637 TF-02-199
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**ORDER GRANTING APPLICATION, APPROVING CONCURRENCE IN MAPS,  
GRANTING WAIVER, APPROVING TARIFF, AND ISSUING CERTIFICATE**

(Issued June 24, 2002)

On May 14, 2002, NOW Communications, Inc. (NOW), filed an application for issuance of a certificate of public convenience and necessity, pursuant to Iowa Code § 476.29 (2001), stating its intention to provide local exchange telecommunications service in the exchanges currently served by Qwest Corporation (Qwest). The application has been identified as Docket No. TCU-02-5. NOW has provided the qualifications of its company officers and financial statements.

Also on May 14, 2002, NOW filed a proposed local exchange tariff with the Board providing the terms, conditions, and rates for local exchange service in listed exchanges as described in Qwest's exchange maps and boundaries. On June 4, 2002, NOW filed revisions to its tariff. The proposed tariff has been identified as Docket No. TF-02-199.

Iowa Code § 476.29(2) provides that a local exchange carrier shall not be denied a certificate if the Utilities Board (Board) finds that the applicant "possesses

the technical, financial, and managerial ability to provide the service it proposes to render and the Board finds the service is consistent with the public interest."

The Board has reviewed NOW's application and finds the necessary technical, financial, and managerial abilities to provide local exchange service has been demonstrated. The Board finds it is in the public interest to approve the application.

NOW also states that its service area will mirror the service territories of exchanges and service area maps of Qwest as they are currently filed and may be modified in the future. Iowa Code § 476.29(4) requires that each certificate define the service territory in which land-line local telephone service will be provided and authorizes the Board to promulgate rules establishing the requirements for filing maps showing the service territory. Subrule 199 IAC 22.20(3) requires that all utilities have on file with the Board maps, which show exchange boundaries. The Board finds that NOW has complied with the statutory and rule requirements by concurring in the exchange maps of Qwest.

NOW has requested the Board waive the requirements of 199 IAC 16.5(2), 18.2, and 22.3(1). NOW has also requested the Board waive federal requirements of 47 U.S.C. § 251(b)(3), pursuant to the authority granted in 47 U.S.C. § 251(f)(2).

NOW requested a waiver of 199 IAC 16.5(2), which requires the keeping of records according to the uniform system of accounts. NOW states it will maintain its books in accordance with generally accepted accounting principles (GAAP). The Board finds this waiver should be granted, since records kept in accordance with GAAP accounting are acceptable for a competitive local exchange service provider.

NOW also requests the requirements of 199 IAC 18.2 be waived. The rule requires that a regulated public utility keep its records in Iowa. The Board will grant the waiver based on NOW's statement that it will make the records available to the Board upon request.

NOW also requests a waiver of 199 IAC 22.3(1), requiring it to independently publish a directory. The Board will grant the waiver based upon NOW's statement that it will arrange for its customers to be included in the directories published by Qwest in the areas it provides local exchange service.

Rule 199 IAC 1.3 states that the Board may grant waivers if it finds, based upon clear and convincing evidence, that the application of the rule would pose an undue hardship, would not prejudice the substantial legal rights of any person, the provisions waived are not specifically mandated by statute, and substantially equal protection of public health, safety, and welfare will be afforded after the waiver. The Board has considered the waiver requests as described above and finds that the waiver meets the four criteria of the rule and the evidence in support of the waiver is clear and convincing.

Adherence to these rules would be an undue hardship on a competitive telecommunications company just beginning business in Iowa. It would be an undue hardship on NOW because other competitive carriers have been granted similar waiver requests. The Board finds there are no substantial legal rights of any person that are affected by these waivers, and there is no statute that specifically mandates the actions waived. Additionally, the Board finds that there will be substantial equal

protection for health, safety, and welfare provided since the actions waived will be completed under different circumstances.

NOW also requests that the Board waive the requirement of 47 U.S.C. § 251(b)(3), pursuant to its authority under 47 U.S.C. § 251(f)(2). 47 U.S.C. § 251(b)(3) requires local exchange carriers provide 2-PIC dialing parity. 47 U.S.C. § 251(f)(2) allows a rural carrier with less than 2 percent of the nation's subscriber lines installed in the aggregate nationwide, to petition a state commission for a suspension or modification of this requirement. NOW states that it intends to offer only pre-paid services and that those services restrict toll access and requires the customer to dial a toll-free number with the system. Therefore, dialing parity is not a technically feasible option.

The Board finds NOW's request to waive the 2-PIC dialing parity requirement of 47 U.S.C. § 251(b)(3) is reasonable and will waive the requirement pursuant to 47 U.S.C. § 251(f)(2).

The Board has reviewed the proposed tariff filed on May 14, 2002, and the tariff revision filed on June 4, 2002, and finds that it substantially complies with Board rules for the filing and processing of tariff pages. The tariff contains rates for both business and residential customers. Notice was provided to all affected carriers. The Board will approve the tariff effective the date of this order and issue NOW a certificate of public convenience and necessity concurrent with this order.

**IT IS THEREFORE ORDERED:**

1. The application for a certificate of public convenience and necessity filed by NOW Communications, Inc., on May 14, 2002, is granted.
2. The concurrence in the maps and boundaries of the exchanges of Qwest Corporation is approved.
3. The waiver of 199 IAC 16.5(2), 18.2, and 22.3(1), identified as Docket No. WRU-02-14-3637, is granted as described in this order.
4. The waiver of 47 U.S.C. §251(b)(3) is granted as described in this order.
5. The tariff filed by NOW Communications, Inc., on May 14, 2002, and its revisions filed on June 4, 2002, are approved effective the date of this order.
6. A certificate, identified as Certificate No. 0250, is being issued to NOW Communications, Inc., concurrent with this order.

**UTILITIES BOARD**

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/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 24<sup>th</sup> day of June, 2002.